
(1999) 05 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 291 of 1999

Sahab Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Citation : (1999) 4 AICLR 839 : (1999) 3 RCR(Criminal) 489

Hon'ble Judges : M.L.Singhal, J

Advocate : A.K. Walia, D.K. Khanna, Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. The prosecution case in brief is that on 1.6.1994, police party headed by HC Mulakh Raj was present in connection with patrolling and crime detention at Jathlana Ghat, Yamuna river. Truck No. PB11A8598 came along the kacha rasta from the side of village Radaur. HC Mulakh Raj became suspicious that cows were being taken for being slaughtered in that truck to Uttar Pradesh and therefore the truck was signalled to stop. The truck accordingly stopped. The truck was found loaded with 14 cows. Rafik and Nasim (Muslims) were found sitting in that truck. Sahab Singh (Hindu) was also found sitting in that truck. They could not produce any licence or permit for carrying cows to the State of Uttar Pradesh for being slaughtered. Ruka was sent to Police Station, Raduar for the registration of the case against the accused under Section 4B/8 of the Punjab Prohibition of Cow Slaughter Act, 1955 and on the basis of that ruka, case FIR No. 125 dated 1.6.1994 was registered against them under Section 4B/8 of the Punjab Prohibition of Cow Slaughter Act, 1955 at Police Station, Radaur. After investigation, Rafik, Nasim and Sahab Singh were challaned.

2. They were charged by the learned Magistrate under Section 4B/8 of the Punjab Prohibition of Cow Slaughter Act, 1955. They pleaded not guilty to the charge and claimed trial.

3. On the conclusion of the trial, vide order dated 5/9.3.1998, learned Chief

Judicial Magistrate, Jagadhri found the charge proved against the accused Rafik, Nasim and Sahab Singh under section 4B/8 of the Punjab Prohibition of Cow Slaughter Act, 1955. He convicted them thereunder and sentenced them to undergo rigorous imprisonment for one year each and to pay fine of Rs. 200/ each or in default of payment of fine to undergo further rigorous imprisonment for three months.

4. Aggrieved from this order dated 5/9.3.1998 passed by the Chief Judicial Magistrate, Jagadhri, Rafik, Nasim and Sahab Singh went in appeal to the Court of Session. Learned Additional Sessions Judge, Jagadhri dismissed their appeal and found the conviction and sentence to be in order vide order dated 24.2.1999.

5. Aggrieved from their conviction and sentence recorded by the Chief Judicial Magistrate, Jagadhri vide his order dated 5/9.3.1998 and maintained in appeal by the learned Additional Sessions Judge, Jagadhri vide his order dated 24.2.1999, Rafik, Nasim and Sahab Singh have come up in separate revisions to this Court namely Crl. Revisions Nos. 291, 292 and 384 of 1999.

6. Through this common judgment, I shall dispose of these three revisions.

7. It was submitted by the learned counsel for the petitioners that Dr. Mohinder Singh who was examined by the prosecution did not state that the cows which were recovered from the truck were useless cows. It was submitted that assuming they were useless cows where there is evidence that they were being taken in that truck for being slaughtered. Useless and nonmilch cows are also kept in GauShalas, where they are taken care of and fed. It was submitted that there is no evidence that those cows which were being taken in that truck were being taken necessarily for being slaughtered and no presumption could be raised that simply because Rafik and Nasim are Muslims, they were taking the cows in that truck for being slaughtered.

8. Section 4B of the Punjab Prohibition of Cow Slaughter Act, 1955 reads as follows :

"Permit for export

(1) Any person desiring to export cows shall apply for a permit to such officer, as the Government may, by notification, appoint in this behalf, stating the reasons for which they are to be exported together with the number of cows and the name of the State of which they were proposed to be exported. He shall also file a declaration that the cows for which the permit for export is required shall not be slaughtered.

(2) The officer appointed under subsection (1) after satisfying himself about the genuineness of the request of the applicant, shall grant him a permit for the export of cows specified in the application :

Provided that no permit for export of Cows, where cow slaughter is not banned by law shall be issued.

(3) The fee for issuing permit shall be such as may be prescribed."

9. Dr. Mohinder Singh PW4 stated that except two cows, all other cows were useless and sterile. There is no evidence that the cows were being taken for being slaughtered. It appears that HC Mulakh Raj entertained this feeling that the cows were being taken for being slaughtered as the truck was being occupied by Rafik and Nasim, Muslims. There is no provision in the Indian Evidence Act allowing presumption to be raised that if cows are in possession of Muslims, they should be presumed to be keeping them for being slaughtered, nor is there any special law providing for such a presumption. There is Section 113A in the Indian Evidence Act which has been inserted in the Indian Evidence Act with a view of raise presumption that it is dowry death but on proof of certain facts. Section 113A of the Indian Evidence Act reads as follows :

"Presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

10. In the Indian Evidence Act no such provision has been inserted so that presumption could be raised on proof of these facts that "the cows are being taken for being slaughtered." Merely because these are nonmilch, dry and are being taken by Muslims in some vehicle, we cannot raise any presumption that they are necessarily being taken for being slaughtered.

11. For the reasons given above, I am of the opinion that Rafik, Nasim and Sahab Singh were convicted and sentenced without there being any concrete, tangible and inspiring evidence. These revisions are accepted and Rafik, Nasim and Sahab Singh are acquitted of the charged framed against them. Fine, if paid, shall be refunded to them.

Revisions allowed